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NG SONG LUAK

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, JOHOR BAHRU

MOHD. YUSOFF MOHAMED J

b

[CRIMINAL APPEAL NO. 15 OF 1982]

31 OCTOBER 1984

CRIMINAL LAW AND PROCEDURE: *Defective charge - Recorded facts do not support the charge - Offence of conspiracy - Whether committed.*

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The appellant pleaded guilty to a charge under s. 120B of the Penal Code and was sentenced to five years' imprisonment. Written facts were submitted to the Learned President but were not read and explained to the appellant.

Held:

It is clear from the recorded facts that the relevant dates and facts of the case do not support the charge.

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[Conviction and sentence set aside. New trial ordered.]

Cases referred to:

Public Prosecutor v. Leong Yoon Meow [1953] MLJ xxxv

Abdul Salam v. Public Prosecutor [1955] 21 MLJ 116

*e***Legislation referred to:**

Penal Code, ss. 120A, 120B, 392, 397

For the appellant - R.K. Menon; M/s. R.K. Menon & Co.

For the respondent - Chua Ming Hung; DPP

JUDGMENT*f***Mohd. Yusoff Mohamed J:**

The appellant pleaded guilty to a charge under s. 120B of the Penal Code and was sentenced to five years' imprisonment. The charge reads:

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That Liew Yoon Choy and Ho Chee Kuan on 11 October 1980 at about 10.15 a.m. at Chai Seng Goldsmith No. 106, Jalan Trus, in the district of Johor Bahru, in the State of Johor, committed the offence of armed robbery under s. 392/397 Penal Code, and that you on the same day and time at Jalan Trus, Johor Bahru conspired with the said persons Liew Yoon Choy and Ho Chee Kuan, as a result of your conspiracy the said offence completed, and that you have thereby committed an offence punishable under s. 392/397 Penal Code, to read together with s. 120B of the Penal Code.

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It is apparent that the charge does not follow the definition of the offence of conspiracy as defined under s. 120A of the Penal Code. The section defines criminal conspiracy as two or more persons agreed to do or cause to be done an illegal act to wit, armed robbery in this case.

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It is obvious that this charge was not referred to the learned Deputy Public Prosecutor who would normally read the draft charge submitted by the Police Prosecutor to see whether it is in conformity with the law under which the appellant was charged. It is also probable that the learned President had not examined the relevant law under which the charge is framed before he accepted the plea of guilty from the appellant.

In *Public Prosecutor v. Leong Yoon Meow* [1953] MLJ xxxv and in *Abdul Salam v. Public Prosecutor* [1955] 21 MLJ 116 - practical guidance on the method of framing the charge has been drawn by Justice Thomson (as he then was) for guidance of learned Presidents, Magistrates and Police Officers. I would say that this guidance is still relevant and should be observed by all concerned.

The record shows that upon the appellant pleading guilty to the charge, written facts of the case were submitted to the learned President, but there is no indication in the record that these facts were read and explained to the appellant. There is also no record indicating that the learned President has himself read and examined the facts of the case to see whether they were conformable with the law and in support of the charge. These might have been done as emphatically explained by the Learned President, Sessions Court. But the record must speak for itself.

Upon looking at the written facts exhibited in the record, it is observed that before 10 September 1980 (not on 11 October 1980 as referred to in the charge), the appellant was seen by Loy Cheng Pong @ Ah Soh to discuss about the robbery to be committed and in which one Liew Eng Choy @ Eng Choy and Ho Chee Kuan @ Soh Kuan were to take part.

On 11 October 1980, the robbery was committed by both Liew Eng Choy and Ho Chee Kuan. On the same day, the jewellery taken in the robbery were brought to the accused for disposal by him.

It is clear from the recorded facts that both the dates and the facts of the case do not support the charge. The date upon which the alleged conspiracy had taken place was before 10 September 1980 and not on 11 October 1980 as referred to in the charge.

To my mind, the facts of this case do not disclose an offence of conspiracy. It may constitute some other offence in the Penal Code which I would not say in view of the order I would make.

The learned Deputy Public Prosecutor admitted the charge was defective but said that it was not fatal and did not amount to a failure of justice. In my view, besides a defective charge, the facts do not support the charge of conspiracy and there are too many unsatisfactory features in this case in which if allowed uncorrected would have caused injustice to the appellant who was then not represented by counsel. In these circumstances I would exercise my power of revision and set aside the conviction and sentence against the appellant and I order that a new trial be conducted by a different Magistrate.

Also found at [1985] 1 CLJ 365

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